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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/813,862 | 03/31/2004 | Edward Vaquero | P03360c1 | 5587 |

23702 7590 04/02/2007
Bausch & Lomb Incorporated
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Rochester, NY 14604-2701

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| EXAMINER |
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PRONE, CHRISTOPHER D

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| ART UNIT | PAPER NUMBER |
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3738

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 04/02/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

Office Action Summary

Application No.

10/813,862

Applicant(s)

VAQUERO ET AL.

Examiner

Christopher D. Prone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 44-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/21/04 5/9/05 2/3/06 7/3/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of 1 species 1, species 4, species 6, species 8, species 10, species 11, and species 13 in the reply filed on 1/29/07 is acknowledged. The applicant simply argued that all the claims 44-55 read on the elected species, which does not make the restriction requirement improper. Since the applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 45-50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 45 recites, "said spring arm extends between a pair of side rails which slide within respective drawer slides extending from said injector device." The rail slides are described in the specification as being elements 161a and 161b shown best in figure 15a. The lack of enablement resides in the fact that the slides 161a and 161b

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do not slide. The drawer component 160 slides in and out of these slides, but the slides fail to move. The examiner believes that the applicant may have been intending to define that element 160 slides within these rails. However the examiner is unclear exactly what the applicant is intending to say.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 53 and 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 53 and 54 recite the limitation "said stripper finger" in line 2 on third page of the claims. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 44-50 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 6,503,275 B1 Cummings.

Cumming discloses the same invention being an injector device shown complete in figure 1, for injecting an IOL into an eye comprising a compressor drawer shown

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complete in figure 6, that moves from an open position shown in figure 25, a partially compressed position shown in figure 6, and a fully compressed position shown in figure 7. The injector drawer of Cummings comprises a movable portion 36, optic stripper element shown as the large center hashed section in figure 12, 2 haptic stripper elements 62, a finger press shown as the curved upper portion of element 36, a finger grasp flange 14, a spring arm shown as the side of element 22 that has a edge 60 that abuts a feature of the injector when said compressor drawer is in a partially closed position to prevent further closing of the compressor. The invention of Cummings further discloses rails shown as the top and bottom sides of component 22 that slide in the same manner as that of the current application.

Claims 44-52 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 6,468,282 B2 Kikuchi et al.

Kikuchi discloses the same invention being an injector device shown in figure 1, for injecting an IOL into an eye comprising a compressor drawer shown 43 and 41, that moves from an open position wherein element 43 is completely removed from the device, a partially compressed position shown in figure 10A, and a fully compressed position shown in figure 10B. The injector drawer of Kikuchi comprises a movable portion 36, optic and haptic stripper elements shown at the base of element 34 engaging the IOL in figure 10B, a finger press shown as the curved upper portion of element 43a, a finger grasp flange 34, a spring arm element 41e that has a edge that

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abuts a feature of the injector when said compressor drawer is in a partially closed position to prevent further closing of the compressor shown in figure 10A. The invention of Kikuchi further discloses rails 41a that slide in the same manner as that of the current application. The injector of Kikuchi discloses a lumen 39 with opening B', a retainer 42 which the IOL is releasably attached to, and an optic stripper 42b

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


CDP

Christopher D Prone
Examiner
Art Unit 3738


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